UNITED
NATIONS

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Economic and Social Council

Distr.
GENERAL

E/CN.6/1995/3/Add.7
14 March 1995

ORIGINAL: ENGLISH

COMMISSION ON THE STATUS OF WOMEN
Thirty-ninth session
New York, 15 March-4 April 1995
Item 3 (b) of the provisional agenda*

PREPARATIONS FOR THE FOURTH WORLD CONFERENCE ON WOMEN: ACTION FOR EQUALITY, DEVELOPMENT AND PEACE: REVIEW AND APPRAISAL OF THE IMPLEMENTATION OF THE NAIROBI FORWARD-LOOKING STRATEGIES FOR THE ADVANCEMENT OF WOMEN

Second review and appraisal of the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women

Report of the Secretary-General

Addendum

II. CRITICAL AREAS OF CONCERN

I. Lack of awareness of and commitment to internationally and nationally recognized women's human rights

1. The Charter of the United Nations includes, among its basic objectives and principles, the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to sex (Article 1, paragraph 3, and Article 55 (c)). The Preamble to the Charter stresses the determination to reaffirm faith in the equal rights of men and women. In the Universal Declaration of Human Rights, 1/ from which most nations derive guiding principles on rights and fundamental freedoms, the United Nations emphatically condemns discrimination on the basis of sex and clearly states that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to

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equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination" (article 7).

2. These principles were applied in the International Covenant on Civil and Political Rights and its Optional Protocol 2/ and provide a legal basis for communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant as well as in the Covenant on Economic, Social and Cultural Rights, both adopted in 1966.

3. Of all the human rights conventions, the Convention on the Elimination of All Forms of Discrimination against Women 3/ constitutes the most explicit statement of women's human rights. The Convention was the culmination of more than 30 years of work by the Commission on the Status of Women. In addition to constituting an international bill of rights for women, codifying those rights that already existed in international law, it sets an agenda for action to provide for full enjoyment of those rights. It obliges the States parties to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women" (article 2). It reaffirms the equality of human rights for women and men in all spheres of life (society and the family), obliges a State party to take action against the social causes of women's inequality, and calls for the removal of laws, stereotypes, practices and prejudices that impair women's well-being and their right to equality.

4. A good indicator of the extent to which de jure discrimination has been addressed is the number of States that have accepted the Convention as a binding obligation. Just prior to the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women, which was held in Nairobi in 1985, there were only 39 States parties to the Convention. As of June 1990, the time of the first review and appraisal of the Nairobi Forward-looking Strategies for the Advancement of Women, the number had increased to 102. As of January 1995, the Convention had 139 States parties. Most of these States have accepted their obligations unconditionally, although 29 States have entered substantive reservations, some based on religious law and cultural tradition.

5. The Economic and Social Council adopted the following conclusions and recommendations arising from the first review and appraisal of the Nairobi Forward-looking Strategies for the Advancement of Women (Council resolution 1990/15):

> "3. The interdependence of the different political and social sectors on the one hand, and the legal and social situation on the other, needs to be recognized. However, de jure equality constitutes only the first step towards de facto equality. Most countries have enacted legal measures to ensure that women have equal opportunities before the law, that is de jure equality. But de facto as well as de jure discrimination continues and visible political and economic commitment by Governments and non-governmental organizations will be required to eliminate it. One obstacle to eliminating de facto discrimination is that most women and men are not aware of women's legal rights or do not fully understand the legal and administrative systems through which they must be implemented. Some affirmative action measures require legal bases which still need to be created.

"Recommendation I. Governments, in association with women's organizations and other non-governmental organizations, should take steps on a priority basis to inform women and men of women's rights under international conventions and national law and to prepare or continue campaigns for women's 'legal literacy' using formal and non-formal education at all levels, the mass media and other means; efforts to this end should have been undertaken by 1994.

"The work of the Committee on the Elimination of Discrimination against Women should be widely publicized through forms of communication that are accessible to women in order to make them aware of their rights. National reports to the Committee should be widely disseminated within the respective countries and discussed by governmental and non-governmental organizations. Organizations of the United Nations system, particularly the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization, should be requested to examine national experience in promoting legal literacy with a view to assisting Governments, non-governmental organizations and women's movements in mounting successful campaigns.

"Recommendation II. Governments should take steps to put legal equality into practice, including measures to provide a link between individual women and official machinery such as the establishment of offices of ombudsmen or similar systems. Where possible, access to legal redress by collective and individual legal action by national machinery and non-governmental organizations should be facilitated in order to assist women in ensuring the implementation of their rights."

6. The World Conference on Human Rights (1993) explicitly recognized that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights" and that "gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person and must be eliminated". 4/ Thus, the Conference rejected any limitation of international standards of human rights for women on the grounds of conflict with culture, tradition or religion.

7. The Conference also took a position against violations of the human rights of women in armed conflicts and considered, inter alia, that systematic rape, sexual slavery or forced pregnancy are violations of the fundamental principles of international human rights and humanitarian law.

8. Other achievements of the Conference included the following:

(a) A call for universal ratification of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000 and the withdrawal of reservations that are incompatible with the object and purpose of the Convention;

(b) The establishment of a focal point for women in the Centre for Human Rights and a request for strengthening the structures and activities of the United Nations related to the human rights of women;

(c) A suggestion to appoint a special rapporteur on violence against women;

(d) A suggestion to elaborate an optional protocol to the Convention providing for individual complaints.

9. National reports and other information suggest that there is continuing progress towards achieving de jure equality. However, the extent to which this translates into de facto enjoyment of this right is related to the seriousness and commitment with which States adhere to the provisions of laws and the attitudes of the judiciary, law enforcement officials and society at large, compounded in many instances by a lack of well-established mechanisms for monitoring implementation. Other sections of the review and appraisal examine the extent to which de facto enjoyment of equal rights has been achieved. This section concentrates on de jure equality.

1. Progress towards de jure equality

10. Many countries report that they have taken steps to provide legal equality and the machinery necessary to implement it. The enactment of equal opportunity laws, for example, is reported by many countries. In addition, most States report that equality between women and men is guaranteed by their constitutions or basic laws even where it is not specifically stated. A number of countries report that they have further reinforced the constitutional guarantees by enacting separate equality laws or amending civil, penal and family codes to ensure that women are accorded equal rights, protection, equal access and opportunities in education, employment, health and matrimonial and family matters under statutory laws. These countries report that the reforms have enabled many women to assert their rights.

11. Many countries indicate that they have made efforts to adjust and incorporate the provisions of the Convention on the Elimination of All Forms of Discrimination against Women into their laws. However, one country reports that "many United Nations conventions are yet to be thoroughly perused by the average person in any home in any country and the essence of their intentions absorbed ... The reality is that it is important for women to know why the Convention was formulated and how it is supposed to assist in improving their situation. It is also important for women to know how the Convention links with the laws of the country and the implications of the Convention for local legislation so that they can lobby". A problem, however, remains when women lack interest, knowledge and awareness or lack motivation and the means to use laws effectively.

12. Several reports suggest an unwillingness on the part of women to assert their claims and rights. In Asia and Africa in particular, some reports indicate that women are still fearful, reluctant, not willing or not comfortable in seeking to exercise their rights through litigation, especially in family disagreements.

13. Moreover, even when anti-discrimination laws exist, their application may be clouded by dual legal systems that recognize the applicability of

discriminatory traditional law. For example, some multi-ethnic, multi-religion countries have dualistic legal systems that permit sex discrimination, especially in areas of personal and family law. In many countries, the values of society are still strongly influenced by customary or religious practices and regulations that are sometimes in direct conflict with international human rights standards, as well as with national statutory laws where civil law differs from the customary or religious practices.

14. Some countries with multiple legal systems report that they have embarked on a review of their statutes in order to harmonize their civil codes with the traditional values that are the basis of customary practices. Other countries report on ongoing steps to repeal or amend discriminatory laws and practices against indigenous people, ethnic minorities or particular groups or classes of the population that have been found to subject women in these groups to double discrimination.

15. Several countries report having made commitments to achieve uniform penal and civil codes applicable to all, regardless of sex, and to ensure the full development and achievement of citizenship for all women so that women may exercise and enjoy all other forms of human rights and fundamental freedoms on a basis of equality with men.

16. However, many countries, particularly in Africa, Asia and the Pacific, report that their domestic laws, policies and practices have not yet incorporated or do not reflect all international norms and standards. The reasons for this vary and include a lack of political commitment; an unresponsive legal system; attitudinal obstacles to the incorporation of international standards when these are believed to be in conflict with religious, cultural or customary practices; the absence of effective domestic groups that can lobby for change effectively and without fear of intimidation; and an absence of effective enforcement mechanisms even where legislation exists.

17. A number of countries report collective action by women to obtain their rights, including individual and class action suits through the courts in order to establish legal precedents through court decisions, often using advocates who take on cases so that the courts can quickly establish constitutional guarantees. Several countries report the use of this type of collective action at national levels, especially in the area of domestic violence and such crimes as trafficking for prostitution.

18. A number of countries in Africa and Asia report that there has been collaboration with non-governmental organizations and donor countries in education for legal literacy. The approaches differ from country to country. Some indicated that they focused on the need to educate the general population. Many countries stated that general literacy in the overall population is, as one country put it, a "major catalyst in developing legal literacy; whereas, formal proclamation of rights by itself does not amount to a force that can change the basic power relations of the society".

19. Nevertheless, several countries state that in order to have a more sustainable impact, legal literacy should include developing an awareness of

rights in general and of existing national statutory rights in particular, since penal and civil codes protect everyone. One country recommends mobilization for a change in attitudes to encourage people to have faith in their legal rights and the process for ensuring those rights. Some countries report that they are focusing on raising women's consciousness and awareness of laws but are silent about the situation of the general public. However, others report on the establishment of legal aid centres, para-legal facilities or similar mechanisms where both women and men, as one country put it, "with minimal filing fee or without obstruction or cost to themselves, can seek assistance to obtain justice and redress under the laws in general".

20. The reasons why women do not always exercise their rights effectively vary. Reports indicate that in some regions women are able to relate more easily to their basic problems, such as poverty, a lack of health services, a lack of child and family services and economic weaknesses, rather than to their legal rights as such.

21. The broad concerns regarding family and matrimonial laws appear to be generally the same from region to region, although different reports emphasize the specific issues that are the most problematic and important in their particular context. For example, payment of alimony and child support and sharing of family domestic chores and responsibility feature prominently in the reports of some countries, while others emphasize economic and political rights and ownership rights to land and property. Paid labour rights, health services, social security and credit rights for all women are major concerns everywhere. Several countries also state that the achievement of certain basic human rights, such as the right to economic development and equality in education, which are lacking in their countries, will automatically lead to the achievement of other basic human rights by women as well as men.

2. Enforcement mechanisms

22. In the implementation of human rights instruments, it is the obligation of States parties not only to respect individual freedoms and rights but also to ensure access to those rights. States are expected to create the conditions that will enable their people to exercise their rights freely in all aspects of life.

23. While only a few countries report that they have established offices of ombudsmen or similar mechanisms for access to rights, other countries report the establishment of councils or tribunals that deal with disputes of all types. Still others report that they have created law reform commissions, task forces or similar bodies to study existing laws and practices with the aim of enacting new laws, harmonizing conflicting concepts or repealing discriminatory sections of existing laws and policies.

24. The judicial system of any country is an important enforcement mechanism. By providing fair interpretation of the laws they can help to achieve the intent of those laws. In order to demonstrate commitment to the principles of equality and gender neutrality, States should allow both women and men with legal capacity to sit in judgement of the laws of the land in which they live.

25. The number of women in the legal profession and judiciary system has increased in many countries. The appointment of women to serve as magistrates or judges has increased steadily, although progress has been slow in many regions and different trends are apparent. Africa and the Caribbean show higher numbers of female judges and magistrates than do other regions of the world. States whose legal system is based on Islamic law have fewer female judges and magistrates.

3. Problematic areas

26. Women's enjoyment of their human rights is particularly problematic in certain areas. One of these is the general area of violence, which has been described in detail in another section this report (E/CN.3/1995/7/Add.4). Others include political rights, reproductive rights, economic rights and rights within the family.

Political rights and nationality

27. Political rights and the right to nationality have been secured by United Nations conventions that predate the Convention on the Elimination of All Forms of Discrimination against Women. However, their enjoyment still remains a problem in some countries.

28. The question of nationality or citizenship combines with the issue of legal capacity in terms of women's rights to participate equally with men in public and civic activities and family relations. Legal capacity affects the right to enter into contracts, and without such capacity women are deprived of many opportunities.

29. In some countries women's rights as citizens are legally limited by restrictions on their right to vote or their right to be elected to public office. Women are sometimes denied the right to pass their citizenship on to their children because a child's nationality is assumed to be that of the father. While several countries report that women are now being allowed to acquire and retain or change their nationality, some countries report that, in practice, nationality is still frequently dictated by the husband's nationality and domicile. A woman who chooses to maintain or acquire a nationality different from that of her husband may find that her rights within the family, and in particular over her children, are restricted.

30. The right of a woman to choose her nationality has become particularly important for women in view of the increase in international migration and in single parenthood. The report of the Economic Commission for Latin America and the Caribbean (ECLAC), in particular, emphasizes the growing importance of full citizenship for women as independent individuals. Non-sexist education and equality between women and men are considered important prerequisites for exercising full citizenship in a free society. However, some countries report that the issue of nationality or citizenship does not feature prominently because of the rural nature of the population.

Reproductive rights

31. The issue of women's reproductive rights figured prominently at the International Conference on Population and Development. It is an area that remains problematic. At its centre is the norm set out in the Convention on the Elimination of All Forms of Discrimination against Women that women and men have the right to freely choose the number and spacing of their children.

32. Evidence shows that a combination of factors is necessary for women to exercise their reproductive rights: appropriate legal provisions, self-reliance, literacy, reasonable economic independence and the availability of health and family planning services, means and information. These factors give a woman the ability to assert her independence in any relationship and in making decisions about whether to have children and on their number and spacing. A Government that respects and wishes to promote these rights needs to take steps to establish the conditions that allow women to exercise their reproductive rights.

Economic rights

33. The Nairobi Forward-looking Strategies called for reforms to guarantee women's constitutional and legal rights in terms of access to land and other means of production and to ensure that women can control the products of their labour and income and enjoy the benefits of agricultural inputs, research, training, credits and other infrastructural facilities.

34. Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women accords women equality with men before the law and generally in civil codes. The assumption was that in matters of legal capacity women would achieve identical rights to those of men and the same opportunities to exercise that capacity. However, in reality, even among States parties to the Convention, it is reported that women are yet to enjoy or exercise such equal rights without any trace of discrimination. There are exceptions - in Europe, studies show that more women than men own land. In entering into contracts or administering their ownership or property rights, many women from all parts of the world still face a variety of hidden obstacles, even where equal rights exist. As one country explained in its report, in "customary patrilineal societies, a woman does not have rights to land for fear that she could pass it to her husband's family". Some countries report that although customary laws gave women usufructuary rights that could not be tampered with by the husband, when land registration acts were introduced to cover clan lands, men took legal possession by registering only themselves as the owners in the title deeds to family land.

35. There is a basic difference in the situation of women in the countries that recognize de jure equality between women and men in their statutory laws, even if they are not implemented in practice, and those countries that deny this principle in their legislation. Some countries report that in the majority of cases, women do not have the opportunity to exercise legal capacity on the same basis as men, even where the laws exist, because of cultural and customary practices. In practice, many women find it difficult to enter into a contract or receive credit from banks without a guarantee from husbands or male

relatives. In some countries where legal capacity is not an obstacle, banks nevertheless charge women higher interest rates, thus discouraging them from applying for loans.

36. Several national reports indicate that for many women the legal autonomy envisaged in the Nairobi Forward-looking Strategies has not been achieved in every aspect of life. In some States, although laws exist to protect rights to credit, in practice policies contradict the intent of the law. However, many reports indicate that more women are now self-employed or are entrepreneurs and thus play an important role in their countries' economies, and that the success of women is at least comparable to that of men. Nevertheless, despite efforts to ensure equal access to credit, many women are still unable to obtain loans or credit from either government facilities or commercial banks because they lack the security or collateral required. In some cases, women are required to put up more collateral and pay higher rates of interest than men.

Basic rights within the family

37. While specific legal provisions and policies that influence family matters vary from country to country, family law and civil law relating to such issues as rights to marriage, divorce, custody, guardianship and maintenance, as well as those matters related to inheritance and to control and ownership of property, remain problematic. Several countries report that they invoke family law before labour, criminal and commercial laws in cases involving women. One country reported that although laws in most areas have been made equal on the basis of sex, this has not been the case in family law.

38. Other countries report that progress in changing discriminatory structures remains slowest in the area of family law. One country reports that the collective matrilineal and patrilineal family norms not only characterize the typical family structure but also dictate societal conduct. Non-conformity with traditional socio-cultural expectations, beliefs and norms is discouraged and is punished through social ostracism.

39. Several countries report the enactment of new family codes or marriage and divorce laws that provide for equal treatment of men and women under statutory laws as they enter into marriage or seek divorce. However, many countries, particularly those governed by the Islamic Sharia and others that choose to follow non-secular laws, still report that the grounds for divorce for men can be different from the grounds for divorce for women. In some countries, in an effort to discourage polygamy and to safeguard young people from forced and early marriages, all marriage must now be registered, regardless of the system under which they were contracted. Many countries have also revised their minimum-age laws for marriages, although the age for girls tends to be lower than that for boys, averaging between 15 and 18 years of age in many countries. Freedom in the choice of a marriage partner is also reportedly a growing trend in many countries.

40. Several countries that originally had discriminatory laws have enacted progressive family codes. However, family law in many countries in Africa, Asia and the Pacific and Western Asia, in particular, still reflects the complex legal history of these countries.

41. As stated in one report, "it should not be forgotten that the new family code is intended as a compromise between traditional values, religious liberties and principles of secularism. This delicate compromise position clearly explains why the code, which in some ways liberates women, still contains many discriminatory measures against them and even appears in certain of its provisions to strengthen patriarchal power. Thus, although it introduces consent to marriage, abrogates (forced) reproduction and banishes levirate (the practice of wife inheritance), it has not abolished polygamy, the bride price, the unequal apportionment of inheritance, the choice of men as head of family and the predominance of paternal authority."

42. In terms of inheritance and property ownership, many countries report that women are considered secondary in the application of the law. This situation is especially apparent among countries where customary laws and religious dictates concerning inheritance and property rights have the same weight as statutory succession acts. In most traditions and cultures, excepting matrilineal societies, inheritance rights have favoured male heirs. Inheritance for widows in many cultures does not even reflect the principle of equal ownership of property acquired during marriage, "especially so in cases where the contribution was of a non-financial kind by the wife, although enabling the husband to earn an income and increase the assets". Under certain legal systems, however, family property acquired during the course of a marriage is divided equally.

43. Some countries report that they have specifically enacted new family codes that have led to the recognition of the economic value of domestic work. Several others, particularly from the African region, report that an illustration of customs influencing discrimination against women can be found in the laws concerning marriage, divorce, property rights and inheritance.

44. Women have always had a limited right to property ownership in many parts of the world, albeit to property held before or after marriage. It is reported that there are instances where a woman can receive property either by gift or inheritance but still not have the right to pass it on. In some societies or among orthodox religious groups, despite secular governance, property owned by males preferably devolves onto the male lineal descendants, while property owned by females is shared equally by widowers, sons and daughters. In other countries, inheritance depends on which law is invoked first and whether it is contested; the first procedure chosen prevails, unless contested. The courts must then decide on the conflicting claims according to the individual case.

Notes

1/ General Assembly resolution 217 A (III).

2/ General Assembly resolution 2200 A (XXI).

3/ General Assembly resolution 34/180.

4/ A/CONF.157/24 (Part I), chap. III, para. 18.